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C O N F I D E N T I A L SECTION 01 OF 03 MEXICO 003099

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SUBJECT: CALDERON LOOKING TO CRACK DOWN ON DRUG DEALERS

Classified By: Political Minister Counselor Charles V. Barclay.
Reason: 1.4 (b), (d).

11. (C) Summary. Opposition parties are responding cautiously to President Calderon's proposed legislation intended to strengthen Mexico's laws against small-time drug dealers. The most publicized provision of the new law is a measure to send individuals possessing small quantities of drugs to treatment centers rather than prisons, which the Calderon has argued strongly is not tantamount to legalization. The success of this initiative will depend heavily on the GOM's ability to implement and monitor the reforms. While the opposition parties have been, at best, lukewarm in their support of the bill, we suspect that Calderon, given the controversial nature of some of the provisions, would not have proposed them if he were not relatively confident they would pass. End Summary.

Not Just "Legalization"

12. (SBU) President Calderon submitted to the Senate on October 2 proposed reforms to the General Law of Health, the Federal Penal Code, and the Federal Code for Penal Proceedings related to narcomenudeo, or drug consumption and small-time drug dealing. The legislative package includes a variety of provisions, including measures intended to increase coordination between local and federal law enforcement elements investigating specific drug offenses and giving states the ability to try drug dealers in local courts. The law also mandates that when a person is found in possession of particular drugs 1000 times the quantities specified in paragraph 5 below, the crime will automatically be under the jurisdiction of the federal courts and would be considered drug trafficking rather than small time dealing. Moreover, the law establishes increased penalties for those engaged in small-scale sale and distribution of narcotics, including four to eight years in prison and 200 to 400 days fine for selling or supplying drugs, which is increased by half when the crime is committed by public servants, health care workers, or takes place in educational, health care police, or prison areas.

But About "Legalization"...

13. (SBU) Articles 478 and 479 of the new legislation have been presented in press and political circles as legalizing the personal use of drugs in Mexico. The reforms seek to establish minimum thresholds over which quantities of drugs will be presumed to be for distribution and subject to prosecution for dealing. Those found to be in possession of

"personal use" quantities of drugs, clearly defined in the legislation, can instead accept a court imposed drug treatment or education program--during which their sentence would only be suspended instead of lifted--rather than face jail time.

14. (SBU) Mexican government officials have stressed that the law is not intended to legalize personal drug use, but instead to make it easier for prosecutors to convict dealers.

Mexican Attorney General Eduardo Medina Mora publicly defended the legislation and in a press conference on October 3 argued that it would strengthen current drug laws by establishing effective mechanisms to determine when a person is engaging in trafficking vice personal consumption. Such a mechanism would thus prevent a dealer from claiming that the drugs found in his possession were for personal use and allow him to evade jail time. Mexican officials also claim that the reforms will help the judicial system more efficiently prosecute narcotrafficking cases by systematically weeding out drug users from distributors.

What's New

15. (SBU) Former President Vicente Fox proposed legislation in 2004 that similarly intended to distinguish between personal narcotic consumption and dealing, which he then proceeded to veto after it was approved by Congress. Most observers chalk up his 180 degree turn to USG complaints that the proposal would facilitate "drug tourism" to Mexico. Calderon's proposal nevertheless differs from Fox's in a few key

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respects. Unlike the earlier version, Calderon's narcomenudeo law specifically defines a small maximum quantity of drugs a person can possess in order to be considered for participation in a treatment program vice prison. As prescribed by the new law, a person must possess less than the following quantities: 2 grams of opium; 50 milligrams diacetylmorphine or heroine; 2 grams cannabis Sativa, cannabis Indica, or marijuana; 500 milligrams cocaine; .015 milligrams LSD; 40 milligrams MDA in powder, granulated, or crystal form or one tablet under 200 milligrams; 40 milligrams MDMA in powder, granulated, or crystal form or one tablet under 200 milligrams; and 40 grams methamphetamine in powder, granulated, or crystal form or one tablet under 200 milligrams.

16. (SBU) The new law also specifies cases in which the treatment option will not be available to a person possessing small quantities of drugs, including having two prior arrests for similar offenses or bringing such drugs into or within 300 meters of education, sports, or other public spaces. Moreover, it makes more explicit the process by which a person is referred to a treatment or education program and the mechanisms for tracking such individuals. Health officials will determine which rehabilitation treatment or program is suitable for the accused and shall advise the public prosecutor of the selected program and institution. Upon the drug abuser's completion of the program, the health authorities will report back to the sentencing judge within two days whether or not the accused has appropriately complied with it. Should the person fail to comply with the requirements, the public prosecutor will be able to re-initiate legal proceedings and lodge penal action.

Devil in the Details

17. (SBU) The efficacy of the new law clearly depends heavily on the GOM's ability to properly monitor those who opt for treatment and enforce penalties for those who fail to complete it. Mexico does have some infrastructure already in place to implement the proposed measures. The National Council of Drug Addiction (CONADIC) will be the primary coordinator of the new provisions on behalf of the Secretary

of Health. Mexico has already established 50 of a planned 310 Prevention Units to screen and refer participants to appropriate treatment centers. 110 federally funded outpatient youth centers will be included in the program, and the GOM is in the process of accrediting some 1100 residential rehabilitation centers run by various private institutions. Nevertheless, information sharing and tracking mechanisms between law enforcement, judicial, and health officials--key to the success of the new law--are still being fleshed out.

Playing Politics, Quietly

18. (C) Opposition political parties Institutional Revolutionary Party (PRI) and Revolutionary Democratic Party (PRD) have been relatively low-key in their public discourse on the narcomenudeo legislation. The president of the Senate Justice Commission, PAN Senator Gonzalez Alcocer, told Poloff on October 14 that the PRD is arguing for higher maximum quantities of drugs, and in fact some PRD deputies in the Mexico City legislature are seeking to pass a measure that would send to Congress a proposal to reform federal anti-drug laws to decriminalize marijuana distribution and use in the state capital. PRD Mexico City Mayor Marcelo Ebrard, however, quickly criticized the proposal and said on October 14 that his government is not interested in making marijuana "cheaper or more accessible." Some PRD deputies have modestly praised Calderon's proposal, noting that drug consumers are victims of organized crime and need medical treatment instead of prison time, even while others have accused it of unduly subordinating local courts to the federal judiciary.

19. (SBU) PRI has been guarded in its approach and is probably gauging public support for the measure. PRI senate coordinator Manlio Fabio Beltrones has said that before approving the reform package, PRI would consult closely with PRI state governors to assess their opinion of the legislation's impact. The Justice and Legislative Studies

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Commissions are scheduled to release a draft opinion on the legislation next week.

Comment

110. (C) Calderon's continuing efforts to strengthen the country's anti-drug laws and his proposed narcomenudeo legislation has the potential to make prosecution of such crimes more effective and efficient. As always, however, the success of any such initiative will depend heavily on the GOM's ability to implement and monitor the reforms. While neither the PRD or PRI has publicly thrown its support behind the bill, given the highly controversial nature of Fox's prior attempt to pass similar legislation, we suspect Calderon would not have proposed such reforms if he were not relatively confident they would pass.

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